

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on January 7, 2011 (Ct. Rec. 18, 22). Attorney Maureen J. Rosette represents plaintiff; Special Assistant United States Attorney Nancy A. Mishalanie represents the Commissioner of Social Security (Commissioner). The parties have consented to proceed before a magistrate judge (Ct. Rec. 7). On August 30, 2010, plaintiff filed a reply (Ct. Rec. 24). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** defendant's motion for summary judgment (Ct. Rec. 22) and **DENIES** plaintiff's motion for summary judgment (Ct. Rec. 18).

## JURISDICTION

Plaintiff protectively applied for disability insurance benefits (DIB) and supplemental security income (SSI) on November 16, 2007, alleging disability beginning July 6, 2007 (Tr. 118-120).

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

1 124). The applications were denied initially and on  
2 reconsideration (Tr. 81-84, 91-94).

3 At a hearing before Administrative Law Judge (ALJ) R. S.  
4 Chester on June 9, 2009, plaintiff, represented by counsel, and a  
5 vocational expert testified (Tr. 36-69). On June 26, 2009, the ALJ  
6 issued an unfavorable decision (Tr. 16-29). The Appeals Council  
7 denied Ms. Scott's request for review on September 8, 2009 (Tr. 1-  
8 3). The ALJ's decision became the final decision of the  
9 Commissioner, which is appealable to the district court pursuant  
10 to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial  
11 review pursuant to 42 U.S.C. § 405(g) on October 1, 2009 (Ct. Rec.  
12 1,4).

13 **STATEMENT OF FACTS**

14 The facts have been presented in the administrative hearing  
15 transcript, the ALJ's decision, and the briefs of the parties.  
16 They are briefly summarized here.

17 Plaintiff was 36 years old at the hearing (Tr. 38). She left  
18 school in the tenth or eleventh grade and earned a GED in 2001.  
19 She is divorced and lives with her two children, ages 22 months  
20 and nine years at the time of the hearing (Tr. 39, 56, 181, 263,  
21 384). Her daughter has several health problems requiring close  
22 monitoring (Tr. 55-56). Plaintiff last worked in July 2007 as an  
23 assistant manager at a dry cleaning business (Tr. 44, 145). She  
24 has worked as a daycare aide, cashier, launderer, furniture  
25 refinisher, telemarketer, and office assistant (Tr. 42, 61-63,  
26 134, 145, 177, 263). Plaintiff testified walking is very painful  
27 and requires using a prescribed cane. She has pain in her back,  
28 hips, leg, knees, neck, and left shoulder blade (Tr. 44-46, 52,

1 57). She suffers depression ("a little depressed") (Tr. 52) but no  
2 one has recommended mental health counseling (Tr. 57). Plaintiff  
3 can walk 1-2 blocks, sit 20-30 minutes, stand 10 minutes, and lift  
4 ten pounds or less (Tr. 47, 49). She is unable to squat, drives  
5 only when necessary, reads with her children, and naps twice daily  
6 for two hours total. Pain causes sleep problems (Tr. 48, 50-52,  
7 136).

#### 8                   **SEQUENTIAL EVALUATION PROCESS**

9                 The Social Security Act (the Act) defines disability as the  
10 "inability to engage in any substantial gainful activity by reason  
11 of any medically determinable physical or mental impairment which  
12 can be expected to result in death or which has lasted or can be  
13 expected to last for a continuous period of not less than twelve  
14 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also  
15 provides that a Plaintiff shall be determined to be under a  
16 disability only if any impairments are of such severity that a  
17 plaintiff is not only unable to do previous work but cannot,  
18 considering plaintiff's age, education and work experiences,  
19 engage in any other substantial gainful work which exists in the  
20 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
21 Thus, the definition of disability consists of both medical and  
22 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
23 (9<sup>th</sup> Cir. 2001).

24                 The Commissioner has established a five-step sequential  
25 evaluation process for determining whether a person is disabled.  
26 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
27 is engaged in substantial gainful activities. If so, benefits are  
28 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,

1 the decision maker proceeds to step two, which determines whether  
 2 plaintiff has a medically severe impairment or combination of  
 3 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

4 If plaintiff does not have a severe impairment or combination  
 5 of impairments, the disability claim is denied. If the impairment  
 6 is severe, the evaluation proceeds to the third step, which  
 7 compares plaintiff's impairment with a number of listed  
 8 impairments acknowledged by the Commissioner to be so severe as to  
 9 preclude substantial gainful activity. 20 C.F.R. §§  
 10 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P,  
 11 App. 1. If the impairment meets or equals one of the listed  
 12 impairments, plaintiff is conclusively presumed to be disabled.  
 13 If the impairment is not one conclusively presumed to be  
 14 disabling, the evaluation proceeds to the fourth step, which  
 15 determines whether the impairment prevents plaintiff from  
 16 performing work which was performed in the past. If a plaintiff is  
 17 able to perform previous work, that Plaintiff is deemed not  
 18 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At  
 19 this step, plaintiff's residual functional capacity (RFC)  
 20 assessment is considered. If plaintiff cannot perform this work,  
 21 the fifth and final step in the process determines whether  
 22 plaintiff is able to perform other work in the national economy in  
 23 view of plaintiff's residual functional capacity, age, education  
 24 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
 25 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

26 The initial burden of proof rests upon plaintiff to establish  
 27 a *prima facie* case of entitlement to disability benefits.

28 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*

1 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
 2 met once plaintiff establishes that a physical or mental  
 3 impairment prevents the performance of previous work. *Hoffman v.*  
 4 *Heckler*, 785 F.3d 1423, 1425 (9<sup>th</sup> Cir. 1986). The burden then  
 5 shifts, at step five, to the Commissioner to show that (1)  
 6 plaintiff can perform other substantial gainful activity and (2) a  
 7 "significant number of jobs exist in the national economy" which  
 8 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
 9 Cir. 1984); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (1999).

10 **STANDARD OF REVIEW**

11 Congress has provided a limited scope of judicial review of a  
 12 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
 13 the Commissioner's decision, made through an ALJ, when the  
 14 determination is not based on legal error and is supported by  
 15 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
 16 Cir. 1985); *Tackett*, 180 F.3d at 1097 (9<sup>th</sup> Cir. 1999). "The  
 17 [Commissioner's] determination that a plaintiff is not disabled  
 18 will be upheld if the findings of fact are supported by  
 19 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
 20 Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence is  
 21 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
 22 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
 23 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
 24 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
 25 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
 26 evidence as a reasonable mind might accept as adequate to support  
 27 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
 28 (citations omitted). "[S]uch inferences and conclusions as the

1 [Commissioner] may reasonably draw from the evidence" will also be  
 2 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On  
 3 review, the Court considers the record as a whole, not just the  
 4 evidence supporting the decision of the Commissioner. *Weetman v.*  
 5 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v.*  
 6 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

7 It is the role of the trier of fact, not this Court, to  
 8 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
 9 evidence supports more than one rational interpretation, the Court  
 10 may not substitute its judgment for that of the Commissioner.  
 11 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
 12 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial  
 13 evidence will still be set aside if the proper legal standards  
 14 were not applied in weighing the evidence and making the decision.  
 15 *Brawner v. Secretary of Health and Human Services*, 839 F.2d 432,  
 16 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to  
 17 support the administrative findings, or if there is conflicting  
 18 evidence that will support a finding of either disability or  
 19 nondisability, the finding of the Commissioner is conclusive.  
 20 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

21 **ALJ'S FINDINGS**

22 The ALJ found plaintiff is insured through December 31, 2012  
 23 for DIB purposes (Tr. 16, 18). At step one he found Ms. Scott has  
 24 not engaged in substantial gainful activity since onset (Tr. 18).  
 25 At steps two and three, he found she suffers from degenerative  
 26 disc disease (DDD) of the cervical and lumbar spine, impairments  
 27 that are severe but which do not alone or in combination meet or  
 28 medically equal a Listed impairment (Tr. 18, 21). The ALJ found

1 plaintiff less than fully credible (Tr. 24) and assessed an RFC  
2 for a range of light work (Tr. 21-22). At step four, he found she  
3 is able to perform her past work as a cashier, call center clerk,  
4 office helper, and teacher's aide (Tr. 27). The ALJ found  
5 plaintiff was not disabled as defined by the Social Security Act  
6 during the relevant period (Tr. 29).

7 **ISSUES**

8 Plaintiff contends the Commissioner erred when he weighed the  
9 evidence of mental and physical impairment, specifically the  
10 opinions of examining professionals Dennis Pollack, Ph.D., and  
11 Paul Michels, M.D., and reviewing professional Mary Gentile, Ph.D.  
12 She alleges the ALJ's credibility assessment is flawed. See Ct.  
13 Rec. 19 at 10-14, 24 at 1-3 (opinion evidence); Ct. Rec. 19 at 1-  
14 15, 24 at 3-4 (plaintiff's credibility).

15 Asserting the ALJ's decision is supported by substantial  
16 evidence and free of legal error, the Commissioner asks the Court  
17 to affirm (Ct. Rec. 14).

18 **DISCUSSION**

19 **A. Weighing medical evidence**

20 In social security proceedings, the claimant must prove the  
21 existence of a physical or mental impairment by providing medical  
22 evidence consisting of signs, symptoms, and laboratory findings;  
23 the claimant's own statement of symptoms alone will not suffice.  
24 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
25 on the basis of a medically determinable impairment which can be  
26 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once  
27 medical evidence of an underlying impairment has been shown,  
28 medical findings are not required to support the alleged severity

1 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cr.  
2 1991).

3 A treating physician's opinion is given special weight  
4 because of familiarity with the claimant and the claimant's  
5 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir.  
6 1989). However, the treating physician's opinion is not  
7 "necessarily conclusive as to either a physical condition or the  
8 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,  
9 751 (9<sup>th</sup> Cir. 1989)(citations omitted). More weight is given to a  
10 treating physician than an examining physician. *Lester v. Chater*,  
11 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). Correspondingly, more weight is  
12 given to the opinions of treating and examining physicians than to  
13 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592  
14 (9<sup>th</sup> Cir. 2004). If the treating or examining physician's opinions  
15 are not contradicted, they can be rejected only with clear and  
16 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the  
17 ALJ may reject an opinion if he states specific, legitimate  
18 reasons that are supported by substantial evidence. See *Flaten v.*  
19 *Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9<sup>th</sup> Cir.  
20 1995).

21 In addition to the testimony of a nonexamining medical  
22 advisor, the ALJ must have other evidence to support a decision to  
23 reject the opinion of a treating physician, such as laboratory  
24 test results, contrary reports from examining physicians, and  
25 testimony from the claimant that was inconsistent with the  
26 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,  
27 751-52 (9<sup>th</sup> Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9<sup>th</sup>  
28 Cir. 1995).

1       **B. Mental impairment**

2              Plaintiff alleges the ALJ failed to properly weigh the June  
 3 2009 opinion of examining psychologist Dr Pollack, as well as the  
 4 December 2005 opinions of examining psychiatrist Dr. Michels and  
 5 reviewing psychologist Dr. Gentile (Ct. Rec. 19 at 11-13; Tr. 242-  
 6 258; 260-266). According to the Commissioner, the ALJ (1) properly  
 7 rejected Dr. Pollack's opinion because it is based on plaintiff's  
 8 unreliable self-report and unsupported by clinical evidence; (2)  
 9 was not required to discuss evidence of no probative value,  
 10 including the 2005 opinions rendered more than a year and a half  
 11 before onset on July 6, 2007; (3) could find plaintiff's failure  
 12 to allege disability based on a mental impairment<sup>1</sup> meant Ms. Scott  
 13 did not consider it severe, and (4) relied on plaintiff's  
 14 testimony mental health counseling has not been recommended (Ct.  
 15 Rec. 23 at 11-14).

16              To further aid in weighing the conflicting medical evidence,  
 17 the ALJ evaluated plaintiff's credibility and found her less than  
 18 fully credible (Tr. 24). Credibility determinations bear on  
 19 evaluations of medical evidence when an ALJ is presented with  
 20 conflicting medical opinions or inconsistency between a claimant's  
 21 subjective complaints and diagnosed condition. See *Webb v.*  
*Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

22              It is the province of the ALJ to make credibility  
 23 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
 24 1995). However, the ALJ's findings must be supported by specific  
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 27              <sup>1</sup>See e.g., Tr. 212 (plaintiff asserts she cannot work due to  
 28 low back and knee pain); Tr. 221 (same).

cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). Once the claimant produces medical evidence of an underlying medical impairment, the ALJ may not discredit testimony as to the severity of an impairment because it is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear and convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995). "General findings are insufficient: rather the ALJ must identify what testimony not credible and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

The ALJ gave several reasons for his credibility assessment, including Ms. Scott's inconsistent statements, lack of medical treatment, and activities inconsistent with claimed impairment (Tr. 24-27).

Contrary to her complaints, on March 3, 2008, plaintiff's single physical therapy session revealed she could sit for 15 minutes, frequently lift and carry a child less than a year old, and ride a stationary bike for 10 minutes (Tr. 23, Exhibit 5F). She was seen six days later in the emergency room. Notes reveal "no deformity or tenderness. No CVA tenderness or percussion" (Tr. 23, Exhibit 15F/3). Subsequent ER visits show requests for pain medication, refusing physical therapy, and [despite alleging being "quite depressed"] good mental health presentation (Tr. 23, 261, Exhibit 16F). Plaintiff states she was medically prescribed a cane, but the evidence does not support her claim (Tr. 24). She told Dr. Michels she does and does not have problems with focus

1 and concentration (Tr. 261).

2       The ALJ observes plaintiff's allegedly disabling pain is  
3 undermined by her daily activities throughout the relevant period,  
4 including caring for two young children, cooking, cleaning, doing  
5 laundry, washing dishes, driving her son to school, shopping,  
6 going out with friends, and visiting her son at school (Tr. 24;  
7 Tr. 134-138). The ALJ's reason is clear, convincing, and supported  
8 by substantial evidence. See *Rollins v. Massanari*, 261 F.3d 853,  
9 857 (9<sup>th</sup> Cir. 2001).

10      The ALJ considered plaintiff's lack of mental health  
11 treatment, failure to follow through with prescribed treatment  
12 (including physical therapy), and lack of supporting objective  
13 medical evidence when he assessed her credibility. At the December  
14 2005 evaluation, Dr. Michels notes plaintiff was not receiving  
15 mental health treatment (Tr. 258). A treatment provider observes  
16 plaintiff only went to physical therapy twice and did not seek  
17 treatment for an unexplained seven month period (Tr. 378-379,  
18 381). Unexplained, or inadequately explained, failure to seek  
19 treatment or follow a prescribed course of treatment is a relevant  
20 factor when assessing credibility. *Fair v. Bowen*, 885 F.2d 597,  
21 603 (9<sup>th</sup> Cir. 1989).

22      The ALJ's reasons for finding plaintiff less than fully  
23 credible are clear, convincing, and fully supported by the record.  
24 See *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002)  
25 (proper factors include inconsistencies in plaintiff's statements,  
26 inconsistencies between statements and conduct, and extent of  
27 daily activities). As noted, noncompliance with medical care or  
28 unexplained or inadequately explained reasons for failing to seek

medical treatment also cast doubt on a claimant's subjective complaints. 20 C.F.R. §§ 404.1530, 426.930; *Fair*, 885 F.2d at 603.

The ALJ failed to fully credit Dr. Pollack's contradicted opinion in part because it is based on plaintiff's unreliable self-report and lacks supporting clinical evidence (Tr. 20, 26, Exhibit 17F). Dr. Pollack diagnosed a pain disorder associated with both psychological factors and a general medical condition. He notes complaints of major depressive disorder, recurrent and moderate, and possible post traumatic stress disorder (PTSD) (Tr. 388-389). He assessed a GAF of 60 indicating some moderate symptoms or difficulties in social, occupational or school functioning<sup>2</sup>. Dr. Pollack opined plaintiff is moderately limited in the ability to perform activities within a schedule and markedly limited in the ability to complete a normal workday (Tr. 391). Ms. Scott told Dr. Pollack she can drive for 30-45 minutes, cares for her 21 month old daughter and 9 year old son, takes her son to the bus stop daily, and picks him up if she is able (Tr. 384-386).

Dr. Pollack administered several tests. His assessed limitations nonetheless appear based at least in part on plaintiff's unreliable complaints. The ALJ notes the evidence does not support ongoing problems caused by a pain disorder or depression, including plaintiff's own statements she does not suffer from a mental impairment (Tr. 20, 322 - denies depression, November 6, 2007).

In addition, the ALJ notes treatment provider Art Flores.

Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Ed. at p. 32(DSM IV) (2005).

PAC, concluded after examination in May 2008 both distraction and overreaction "responses were suggestive to non-organic factors" (Tr. 24, Exhibit 16F). More weight is given to a treating than an examining source. See *Lester v. Chater*, 81 F.3d at 830 (9<sup>th</sup> Cir. 1995).

The ALJ's reasons are specific, legitimate and supported by the record. An opinion of disability premised to a large extent on the claimant's own accounts of his or her symptoms and limitations may be disregarded, once those complaints have themselves been properly discounted. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9<sup>th</sup> Cir. 1995), citing *Flaten v. Secretary of Health & Human Services*, 44 F.3d 1453, 1463-1464 (9<sup>th</sup> Cir. 1995). When evaluating conflicting opinions, an ALJ need not accept the opinion of a doctor [or psychologist] if that opinion is brief, conclusory, and inadequately supported by clinical findings. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001).

The ALJ was not required to discuss the 2005 opinions of Drs. Michels and Gentile well before onset. The ALJ is required to discuss probative evidence, that is, evidence pertaining to the relevant time frame. See *Vincent v. Heckler*, 739 F.2d 1393, 1394-1395 (9<sup>th</sup> Cir. 1984) (ALJ is only required to explain reasons for rejecting significant probative evidence).

The ALJ properly weighed the evidence of Ms. Scott's mental limitations as well as her credibility.

#### C. Physical impairment

Plaintiff alleges the ALJ should have found her more physically limited. She offers no argument to support the allegation. Her briefing is thus insufficient to raise a claim

1 with respect to physical limitations. See e.g., *Kohler v. Inter-*  
 2 *Tel Technologies*, 244 F.3d 1167, 1182 (9<sup>th</sup> Cir. 2001) ("bare  
 3 assertion of an issue does not preserve a claim").

4 The ALJ considered plaintiff's credibility when he weighed  
 5 the evidence of physical limitation. Notably, plaintiff did not  
 6 undergo physical therapy as directed (Tr. 378). The ALJ observes  
 7 plaintiff's complaints of chronic pain and weakness are not  
 8 supported by medically acceptable imaging, and the cane she uses  
 9 has not been medically prescribed or recommended (Tr. 24, 285).  
 10 Dr. Michels notes a July 2005 cervical x-ray is normal. A lumbar  
 11 MRI shows only mild central stenosis with small disk protrusions  
 12 (Tr. 260, 285). The ALJ points out an examination about four  
 13 months after onset, in November 2007, reveals normal strength and  
 14 range of motion on testing with "no significant or abnormal  
 15 findings." (Tr. 23, Exhibit 2F). In December 2007 Mr. Flores notes  
 16 he has not seen plaintiff in more than a year (Tr. 335). In March  
 17 3, 2008 she denies taking pain medication (Tr. 337).

18 While subjective pain testimony cannot be rejected solely on  
 19 the ground that it is not fully corroborated by objective medical  
 20 evidence, the medical evidence is still a relevant factor in  
 21 determining the severity of the claimant's pain and its disabling  
 22 effects. 20 C.F.R. § 404.1529(c)(2).

23 The ALJ is responsible for reviewing the evidence and  
 24 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
*Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the role of the  
 25 trier of fact, not this court, to resolve conflicts in evidence.  
*Richardson*, 402 U.S. at 400. The court has a limited role in  
 26 determining whether the ALJ's decision is supported by substantial  
 27 28

1 evidence and may not substitute its own judgment for that of the  
2 ALJ, even if it might justifiably have reached a different result  
3 upon de novo review. 42 U.S.C. § 405 (g).

4 **CONCLUSION**

5 Having reviewed the record and the ALJ's conclusions, this  
6 court finds that the ALJ's decision is free of legal error and  
7 supported by substantial evidence..

8 **IT IS ORDERED:**

9 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 22**) is  
10 **GRANTED.**

11 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 18**) is  
12 **DENIED.**

13 The District Court Executive is directed to file this Order,  
14 provide copies to counsel, enter judgment in favor of defendant,  
15 and **CLOSE** this file.

16 DATED this 4th day of January, 2011.

17 s/ James P. Hutton  
18 JAMES P. HUTTON  
19 UNITED STATES MAGISTRATE JUDGE  
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